



January 18, 2002

SENATE BILL No. 212

DIGEST OF SB 212 (Updated January 15, 2002 3:26 PM - DI 75)

Citations Affected: IC 24-5.

Synopsis: Sale of recalled products. Provides that the sale of a recalled product is a deceptive consumer sale. Provides an affirmative defense if the recalled product has been altered so that the product was rendered incapable of serving its original purpose.

Effective: July 1, 2002.

**Lawson C, Lanane, Simpson,
Skillman**

January 7, 2002, read first time and referred to Committee on Commerce and Consumer Affairs.
January 17, 2002, reported favorably — Do Pass.

C
o
p
y

SB 212—LS 6763/DI 94+



January 18, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 212

A BILL FOR AN ACT to amend the Indiana Code concerning consumer sales.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-5-0.5-3, AS AMENDED BY P.L.21-2000,
2 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2002]: Sec. 3. (a) The following acts or representations as to
4 the subject matter of a consumer transaction, made either orally or in
5 writing by a supplier, are deceptive acts:
6 (1) That such subject of a consumer transaction has sponsorship,
7 approval, performance, characteristics, accessories, uses, or
8 benefits it does not have which the supplier knows or should
9 reasonably know it does not have.
10 (2) That such subject of a consumer transaction is of a particular
11 standard, quality, grade, style, or model, if it is not and if the
12 supplier knows or should reasonably know that it is not.
13 (3) That such subject of a consumer transaction is new or unused,
14 if it is not and if the supplier knows or should reasonably know
15 that it is not.
16 (4) That such subject of a consumer transaction will be supplied
17 to the public in greater quantity than the supplier intends or

SB 212—LS 6763/DI 94+



C
o
p
y

- 1 reasonably expects.
- 2 (5) That replacement or repair constituting the subject of a
- 3 consumer transaction is needed, if it is not and if the supplier
- 4 knows or should reasonably know that it is not.
- 5 (6) That a specific price advantage exists as to such subject of a
- 6 consumer transaction, if it does not and if the supplier knows or
- 7 should reasonably know that it does not.
- 8 (7) That the supplier has a sponsorship, approval, or affiliation in
- 9 such consumer transaction he does not have, and which the
- 10 supplier knows or should reasonably know that he does not have.
- 11 (8) That such consumer transaction involves or does not involve
- 12 a warranty, a disclaimer of warranties, or other rights, remedies,
- 13 or obligations, if the representation is false and if the supplier
- 14 knows or should reasonably know that the representation is false.
- 15 (9) That the consumer will receive a rebate, discount, or other
- 16 benefit as an inducement for entering into a sale or lease in return
- 17 for giving the supplier the names of prospective consumers or
- 18 otherwise helping the supplier to enter into other consumer
- 19 transactions, if earning the benefit, rebate, or discount is
- 20 contingent upon the occurrence of an event subsequent to the time
- 21 the consumer agrees to the purchase or lease.
- 22 (10) That the supplier is able to deliver or complete the subject of
- 23 the consumer transaction within a stated period of time, when the
- 24 supplier knows or should reasonably know he could not. If no
- 25 time period has been stated by the supplier, there is a presumption
- 26 that the supplier has represented that he will deliver or complete
- 27 the subject of the consumer transaction within a reasonable time,
- 28 according to the course of dealing or the usage of the trade.
- 29 (11) That the consumer will be able to purchase the subject of the
- 30 consumer transaction as advertised by the supplier, if the supplier
- 31 does not intend to sell it.
- 32 (12) That the replacement or repair constituting the subject of a
- 33 consumer transaction can be made by the supplier for the estimate
- 34 the supplier gives a customer for the replacement or repair, if the
- 35 specified work is completed and:
- 36 (A) the cost exceeds the estimate by an amount equal to or
- 37 greater than ten percent (10%) of the estimate;
- 38 (B) the supplier did not obtain written permission from the
- 39 customer to authorize the supplier to complete the work even
- 40 if the cost would exceed the amounts specified in clause (A);
- 41 (C) the total cost for services and parts for a single transaction
- 42 is more than seven hundred fifty dollars (\$750); and

C
o
p
y



- 1 (D) the supplier knew or reasonably should have known that
 2 the cost would exceed the estimate in the amounts specified in
 3 clause (A).
 4 (13) That the replacement or repair constituting the subject of a
 5 consumer transaction is needed, and that the supplier disposes of
 6 the part repaired or replaced earlier than seventy-two (72) hours
 7 after both:
 8 (A) the customer has been notified that the work has been
 9 completed; and
 10 (B) the part repaired or replaced has been made available for
 11 examination upon the request of the customer.
 12 (14) Engaging in the replacement or repair of the subject of a
 13 consumer transaction if the consumer has not authorized the
 14 replacement or repair, and if the supplier knows or should
 15 reasonably know that it is not authorized.
 16 (15) The act of misrepresenting the geographic location of the
 17 supplier by listing a fictitious business name or an assumed
 18 business name (as described in IC 23-15-1) in a local telephone
 19 directory if:
 20 (A) the name misrepresents the supplier's geographic location;
 21 (B) the listing fails to identify the locality and state of the
 22 supplier's business;
 23 (C) calls to the local telephone number are routinely forwarded
 24 or otherwise transferred to a supplier's business location that
 25 is outside the calling area covered by the local telephone
 26 directory; and
 27 (D) the supplier's business location is located in a county that
 28 is not contiguous to a county in the calling area covered by the
 29 local telephone directory.
 30 (16) The act of listing a fictitious business name or assumed
 31 business name (as described in IC 23-15-1) in a directory
 32 assistance database if:
 33 (A) the name misrepresents the supplier's geographic location;
 34 (B) calls to the local telephone number are routinely forwarded
 35 or otherwise transferred to a supplier's business location that
 36 is outside the local calling area; and
 37 (C) the supplier's business location is located in a county that
 38 is not contiguous to a county in the local calling area.
 39 (17) That the supplier violated IC 24-3-4 concerning cigarettes for
 40 import or export.
 41 **(18) That a supplier knowingly sells or resells a product to a**
 42 **consumer if the product has been recalled, whether by the**

C
O
P
Y



order of a court or a regulatory body, or voluntarily by the manufacturer, distributor, or retailer.

(b) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

(c) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(d) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

(e) For purposes of subsection (a)(12), a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

(f) For purposes of subsection (a)(15), a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance database unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

(g) For purposes of subsection (a)(18), it is an affirmative defense to any action brought under this chapter that the product has been altered by a person other than the defendant to render the product completely incapable of serving its original purpose.

C
o
p
y



SENATE MOTION

Mr. President: I move that Senator Lanane be added as coauthor of Senate Bill 212.

LAWSON C

SENATE MOTION

Mr. President: I move that Senator Simpson be added as coauthor of Senate Bill 212.

LAWSON C

SENATE MOTION

Mr. President: I move that Senator Skillman be added as coauthor of Senate Bill 212.

LAWSON C

C
o
p
y



COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 212, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 212 as introduced.)

SERVER, Chairperson

Committee Vote: Yeas 8, Nays 0.

C
o
p
y

SB 212—LS 6763/DI 94+

